

Message Text

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ACTION ARA-10

INFO OCT-01 IO-13 ISO-00 CIAE-00 INR-07 JUSE-00
NSAE-00 SNM-02 TRSE-00 USIA-15 NSC-05 OES-06
OMB-01 AGRE-00 IGA-02 AID-05 MED-03 HEW-06 L-03
H-02 DODE-00 /081 W
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P R 282047Z MAR 77
FM AMEMBASSY GUATEMALA
TO SECSTATE WASHDC PRIORITY 5370
INFO USMISSION GENEVA
AMEMBASSY MEXICO
DEA HQS WASHDC
AMEMBASSY MANAGUA
AMEMBASSY SAN JOSE
AMEMBASSY SAN SALVADOR
AMEMBASSY TEGUCIGALPA

UNCLAS GUATEMALA 1912

E.O. 11652: N/A
TAGS: SNAR, GT
SUBJ: GUATEMALA STIFFENS ITS NARCOTICS LAWS

REF: (A) STATE 57902 (NOTAL), (B) GUATEMALA 661 (NOTAL)

1. IN A MAJOR STEP FORWARD FOR NARCOTICS ENFORCEMENT IN
GUATEMALA, GUATEMALAN CONGRESS MARCH 22 PASSED AND SENT TO
THE PRESIDENT LAW NUMBER 10-77 GREATLY INCREASING PENALTIES
FOR INTERNATIONAL TRAFFICKING AND IN CERTAIN CASES FOR
DOMESTIC TRAFFICKING IN NARCOTICS.

2. AS REPORTED REF B, CHIEF JUSTICE SUPREME COURT HAD BEEN
RECEPTIVE TO SUGGESTION MADE TO HIM JANUARY 28 BY EMBASSY
AND DEA OFFICERS THAT GUATEMALA LAW SERIOUSLY DEFICIENT IN
PERMITTING NARCOTICS VIOLATORS TO "COMMUTE" THEIR SENTENCES,
THAT IS, TO OBTAIN THEIR RELEASE FROM PRISON BY PAYING NOT
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MORE THAN FIVE DOLLARS FOR EACH DAY OF THEIR SENTENCE.
EMBASSY SUBSEQUENTLY SENT CHIEF JUSTICE COPIES OF
BRAZILIAN, COLOMBIAN, AND BOLIVIAN NARCOTICS LAWS WHICH
WERE SUPPLIED BY DEPARTMENT AND EMBASSIES BOGOTA AND
BRASILIA. ON FEBRUARY 22 CHIEF JUSTICE SENT CONGRESS
HIS PROPOSED AMENDMENTS TO GUATEMALAN CRIMINAL CODE,
AND THESE WERE PASSED WITHOUT CHANGE. HOWEVER, AMEND-

MENTS DO NOT ENTER INTO FORCE UNTIL SIGNED BY PRESIDENT AND PUBLISHED IN OFFICIAL GAZETTE, WHICH CAN TAKE AS LONG AS A MONTH.

3. EXISTING LAW PROVIDES THAT "THE PENALTY SPECIFIED IN THE PREVIOUS ARTICLE WILL BE INCREASED BY ONE-THIRD IN THE FOLLOWING CASES: (1) WHEN THE SUBSTANCE OR PRODUCT REFERRED TO IN PREVIOUS ARTICLE IS GIVEN TO A MINOR, AND (2) WHEN THE OFFENDER IS A PHYSICIAN, CHEMIST, BIOLOGIST, PHARMACIST, DENTIST, LABORATORY TECHNICIAN, NURSE, OBSTETRICIAN OR MIDWIFE."

4. NEW LAW PROVIDES THAT PENALTIES SPECIFIED ABOVE "WILL BE INCREASED BY ONE-THIRD IN THE FOLLOWING CASES:

"(1) WHEN THE COMMISSION OF THE OFFENSE OCCURS WITHIN A PUBLIC OR PRIVATE SCHOOL OR IN ITS IMMEDIATE VICINITY;

"(2) WHEN THE SUBSTANCE OR PRODUCT...IS SOLD OR GIVEN TO A MINOR;

"(3) WHEN THE OFFENDER IS A PHYSICIAN, CHEMIST, BIOLOGIST, PHARMACIST, DENTIST, LABORATORY TECHNICIAN, NURSE, OBSTETRICIAN, MIDWIFE, TEACHER, MINISTER OR PRIEST, OR OTHERS RESPONSIBLE FOR THE LEADERSHIP OF GROUPS. ALSO THOSE PUBLIC EMPLOYEES AND OFFICIALS WHO TAKE ADVANTAGE OF THEIR POSITION (TO COMMIT THE OFFENSE);

"(4) WHEN THE OFFENSES...INCLUDE ACTIVITIES OF INTERNATIONAL UNCLASSIFIED

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TRAFFICKING OR HAVE A CONNECTION OF ANY KIND WITH IT. IN SUCH CASES, THE SENTENCES WILL BE INCOMMUTABLE, THE FINES WILL BE FROM FIVE THOUSAND TO 50 THOUSAND QUETZALES (ONE QUETZAL EQUALS ONE DOLLAR), AND THE CIVIL RESPONSIBILITIES, IN THE CASES SPECIFIED IN ARTICLE 83 OF THE CODE OF CRIMINAL PROCEDURE, WILL BE FIXED BETWEEN 10 THOUSAND AND 100 THOUSAND QUETZALES."

5. WITH REGARD TO REF A, IT WILL BE SEEN FROM FOREGOING THAT GUATEMALAN LAW MAKES NO DISTINCTION BETWEEN TRAFFICKING AND POSSESSION AND NONE BETWEEN MARIHUANA AND HARD NARCOTICS. OBVIOUSLY COURTS, IN DECIDING BETWEEN A LESSER OR MORE SEVERE PENALTY, MAY TAKE FACT THAT ONLY MARIHUANA IS INVOLVED INTO ACCOUNT. HOWEVER, NEW LAW MAKES JAIL SENTENCE FOR POSSESSION OF MARIHUANA MANDATORY IF POSSESSOR IS IN ANY WAY INVOLVED IN INTERNATIONAL TRAFFICKING.

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